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## Montana Legislative Summary, 1961

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# Montana Legislative Summary, 1961

This article is intended to summarize the more significant legislation passed by the 1961 Montana Legislative Assembly. The following sections have been written by the Law School faculty, based on bills selected by the Law Review staff. Not all of the legislation enacted has been commented on, but the bills believed to be the most important permanent laws have been included. Appropriation bills and other similarly temporary legislation have not generally been noted. Statutes noted are identified both by the chapter of the 1961 session laws and by their House or Senate bill numbers.

The new enactments are discussed under the following major headings:

ATTORNEYS	LEGISLATIVE COUNCIL
BUSINESS REGULATION	LIVESTOCK
CIVIL PROCEDURE	MINERALS
COMMERCIAL TRANSACTIONS	PUBLIC UTILITIES
CONSTITUTIONAL AMENDMENTS	REAL PROPERTY
CORPORATIONS	SECURITIES
CRIMINAL LAW	STATE AND LOCAL GOVERNMENT
CRIMINAL LAW ADMINISTRATION	TAXATION
DOMESTIC RELATIONS	TORTS
HIGHWAYS AND TRAFFIC	WATER LAW
INSURANCE	WORKMEN'S COMPENSATION
JUDICIARY	
LABOR LAW	

## ATTORNEYS

The annual license tax for attorneys has been increased from five to ten dollars by Chapter 18 (H.B. 190).

## BUSINESS REGULATION

### *Architects*

Chapter 167 (H.B. 231) amends *Revised Codes of Montana*, 1947, sections 66-114 and -115, as amended,<sup>1</sup> by increasing generally the fee percentage which public agencies are directed to pay architects on public construction. R.C.M. 1947, section 66-114 is amended by providing three different fee schedules, according to whether the architect's services are for

<sup>1</sup>Hereinafter REVISED CODES OF MONTANA, 1947, are cited as R.C.M. 1947.

"specialized types" of structures, for "conventional types" or "utilitarian types." R.C.M. 1947, section 66-115 is amended to insure payment for services rendered on projects abandoned by the agency.

### *Cosmetology*

The principal, and surely most important purpose, of Chapter 244 (Sub. H.B. 435), is to strengthen the existing act regulating the beautician trade (cosmetology) against the possible charge that it is unconstitutional, particularly on the ground that it delegates the power to fix prices to a class of private individuals. But an important *practical* result of these amendments is that they empower the Board to hold hearings and set prices for every county and/or community in the state, strictly on its own initiative.

Although the existing act provides that the administrative board has the power to "approve price agreements among licensed practitioners . . . whereby minimum prices for . . . beauty culture are established by explicit written agreement signed and executed by at least . . . seventy-five per cent of the practitioners in any county," the sufficiency of this language may be questioned on at least two points. Although the Board is directed to "investigate the reasons . . . and the justification for such agreement," it may do so "with or without public hearing thereon," and, in any case, the power to *initiate* proposed price schedules vests exclusively in the trade.

Under the new act, the Board is *required* to hold a public hearing in any case prior to the setting or changing of prices for any area. It also vests in the Board the power to act on its own initiative in holding hearings and fixing prices for beauty shops. Although the provisions authorizing members of the trade to propose price schedules are retained, and the provision vesting the power in the Board to act on its own initiative is not very skillfully correlated with those old provisions, the prospects for upholding the act against the charge of "unconstitutional delegation" are greatly improved.

The new law also makes a number of changes in the existing statute, calculated to further professionalize the beauty culture business. Educational and training standards and requirements are increased; beauty shops and schools no longer can be operated together; schools must post a substantial bond; "apprentices" no longer can work in a beauty shop—only licensed practitioners, who have received a diploma in beauty culture from a beauty school, which, as amended, now includes the course in cosmetology at Northern Montana College. From December 31, 1961, a requirement of one year active practice in Montana prior to applying for a manager-operator license, is added to the other requirements for that license.

The Board's official name is changed from that of "The Montana State Examining Board of Beauty Culturists," to "The Montana State Examining Board of Cosmetologists," in R.C.M. 1947, section 66-804, though elsewhere in the act the old name continues to be used.

### *Dentistry*

The principal purpose of Chapter 34 (H.B. 272) is to tighten up supervision and regulation of dental laboratories, to prevent those working there-

in from "performing dental services" without a license. To this end, R.C.M. 1947, section 66-910 will now require any licensed dentist using the services of any dental lab or orthodontic technician, to furnish a "written work authorization" describing the work in detail, and both parties are ordered to retain in their records copies of such work slips for a period of two years to identify the source of their work. The same section is amended to limit such technician's advertising to professional trade journals, directories, periodicals, and business listings in telephone directories, limited to name, address and telephone number; nor shall such persons solicit the public directly in any way whatsoever.

Section 4 amends R.C.M. 1947, section 66-911, to empower certain interested persons to file a suit for an injunction against any person violating the act—this being in addition to other penalties against them, provided for by the act. Section 5, amending R.C.M. 1947, section 66-917, defines, classifies and limits the circumstances in which "professional cards" may be used by a *dentist*.

### *Medicine*

Amending the code regulating the practicing of medicine in Montana, Chapter 29 (H.B. 152) requires the addition of several subjects in which an applicant for a license to practice medicine will be examined.

Perhaps of equal importance is the amendment of R.C.M. 1947, section 66-1003, so as expressly to authorize the Medical Examining Board to approve "any medical college, including foreign medical schools and colleges," if it "conforms to the minimum educational standards for medical colleges as established in the sound discretion of the Board of Medical Examiners of the State of Montana." This may facilitate the qualifying of foreign physicians for practice in Montana.

### *Physical Therapy*

Chapter 39 (H.B. 94) extends the legislative policy of regulating occupations to the physical therapist. Designating the Medical Examining Board as the administrative agency for the act, it defines "physical therapist" so as to distinguish it from other healing arts, techniques and processes; states the qualifications required of any applicant for a license; and provides that the Board shall give appropriate examinations, testing the applicant's qualifications, provided, however, that those practicing in the state at the act's passage, who continue such practice and are eligible for membership in either of two professional associations, may be licensed without an examination through September 30, 1961. The act prohibits the licensee thereunder from practicing any other form of healing; stipulates certain fees; and empowers the Board to refuse a license or to renew, for certain causes, including guilt, in the Board's opinion, of immoral conduct, or conviction of any crime involving moral turpitude. It also makes violation of the act a misdemeanor, and imposes penalties therefor.

### *Plumbing*

Chapter 185 (Sub. S.B. 159) amends, in certain respects, the statutes which regulate the plumbing business and persons engaged therein. Although both master and journeyman plumbers have long been required

generally to secure a state license therefor, in the past this requirement has been limited to those carrying on their trade in incorporated cities and towns with more than 1,000 residents. Section 1 of this act amends R.C.M. 1947, section 66-2401 so as to eliminate the 1,000 resident limitation, but substitutes therefor an authority in the town's governing body (regardless of size) to authorize a person without such license to engage in the plumbing business "until such time as a duly licensed person is reasonably available." The town's council must inform the state Board of Plumbing Examiners of their action, however. Section 3 amends R.C.M. 1947, section 66-2405, to require the posting of a \$5000 bond, by each master plumber, to insure the faithful performance of the duties imposed on him under the act.

### *Trading Stamp Tax*

Probably the most controversial bill introduced into the 1961 legislative session, chapter 153 (H.B. 442), imposes an operating license fee of \$100 per year, plus two per cent of the licensee's gross receipts from his store, on any store operator giving trading stamps, as defined in the act, with merchandise sold. The obvious purpose of the act is to discourage the giving of such stamps.

The license, which is non-transferable, must be applied for on or before January 1, of each year, on forms supplied by the State Board of Equalization. Any person violating the act by failing to pay the license tax when due is subject to a civil suit by the state to recover three times the tax due; it also is subject to be enjoined from furnishing any trading stamps in its business. All moneys recovered under this act are to go into the state's general fund. The act will be effective from June 30, 1962.

## *CIVIL PROCEDURE*

### *New Rules*

The enactment in Chapter 18 (H.B. 86) of the Montana Rules of Civil Procedure, patterned after the Federal Rules of Civil Procedure, to govern practice before the district courts of Montana is an important milestone in progress of the law. These rules will be the subject of an article in a forthcoming issue of the *Montana Law Review*.

### *Court Reporters*

Chapter 22 (S.B. 28) provides that district court "stenographers" will be designated "reporters" although their duties will remain as they have been. Their annual salary has been increased to \$6,600.

### *Affidavits of Bias and Prejudice*

The time for filing affidavits of bias or prejudice disqualifying district court judges in civil jury cases has been limited by Chapter 218 (S.B. 167). In such cases and in judicial districts having only one judge, if notice of the day fixed for setting the trial calendar is given by the clerk of court to all parties at least fifteen days prior to the setting date, the affidavits must be filed at least 20 days before the day so fixed.

## COMMERCIAL TRANSACTIONS\*

### *Chattel Mortgages*

Heretofore a chattel mortgage has been good against third parties for two years and sixty days from the time of filing. If the mortgagee holds the chattel mortgage as security for a debt running longer than that period, he has been obliged to renew the filing. Chapter 67 (Sub. S.B. 34) extends the duration of the chattel mortgage lien to two years and sixty days from the due date of the debt or obligation secured thereby. Should renewal still be necessary the required affidavit may now in every case be made by the individual mortgagee's representative. Previously this could be done only if the mortgagee were out of the county.<sup>a</sup>

### *Sale of Seeds*

Chapter 196 (H.B. 273) regulates the sale of vegetable and flower seeds. Such seeds, whether sold at wholesale or retail, must be labelled as to kind and variety, relative content, seed content, and percentage of germination. The legislation further details seeds within "prohibited" and "restricted" lists, and regulates the percentage of weed seeds permitted. Provision is made for inspection by the Montana grain inspection laboratory, and the act is to be administered and enforced by the commissioner of agriculture who is empowered to make proper rules and regulations and issue "stop sale" orders. It not only is made unlawful to sell seeds improperly labelled or containing weed seeds in the prohibited list or in excess of prescribed percentages, but also to sell seeds as to which there has been false or misleading advertising or as to which a test to determine germination has not been completed within nine months prior to sale or exposure for sale. Violations of the act are misdemeanors.

By Chapter 168 (H.B. 247) the sale of grass seeds is regulated by an amendment to the law with respect to the sale of agricultural seeds. The

<sup>a</sup>Included in the new Insurance Code, enacted in 1959 but effective January 1, 1961, are some exemption provisions that should be noted. R.C.M. 1947, §§ 40-3734 to -3737 exempt from the claims of the insured's creditors his annuity contracts, disability contracts, and group life insurance even when payable to the insured. It also exempts life insurance purchased by the debtor, when someone else is made the beneficiary, even if the debtor-insured retains the right to change the beneficiary. If premiums are paid in fraud of creditors, the creditors can recover the amount of the premiums out of the proceeds of the policy. It may still be possible, however, that changing the beneficiary from his estate to some third person may be a fraudulent conveyance of the whole policy. See *Kramer v. Metropolitan Life Ins. Co.*, 154 N.Y.S.2d 565 (Sup. Ct. 1956).

The existing insurance exemption statute, R.C.M. 1947, § 93-5814 (7), was not repealed and apparently still stands to exempt policies on the debtor's life up to \$500 annual premium even though no third person is named beneficiary. When a third person is beneficiary the \$500 limit would no longer apply. See Williams, *Montana's Comprehensive New Insurance Law*, 22 MONT. L. REV. 1, 24 (1960).

There appears to be an error in R.C.M. 1947, § 40-3737 (1) (b), where the amount \$250 is used. The context seems to require that this be read \$350. This position is supported by N.Y. INS. LAW § 166 (3), after which the Montana law was patterned. There the same figure is used throughout the section; here it is not.

\*Chattel mortgages now on record are not, of course, affected by the amendment. That livestock and motor vehicle mortgages are not filed with the county clerk is recognized now by amendment in the section dealing with renewal of liens. It would be well for the sake of clarity if the same limitation were expressed in R.C.M. 1947, § 52-304, which states that chattel mortgages are to be filed with the county clerk.

amendment prohibits sales of seeds represented to be for lawn seeding purposes containing less than 50% pure seed of perennial fine-leaved species, which are to be specified by regulations. Grass mixtures which do not contain 50% of pure seed of perennial fine-leaved grasses may be sold, but when in packages of 25 pounds or less they must carry the statement, "Not recommended for a fine-leaved perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable."

### *Sale of Beer*

Chapter 177 (H.B. 399) removes the five-gallon limitation on the quantity of beer which may be sold by licensed retailers for consumption off the premises.

## CONSTITUTIONAL AMENDMENTS

### *Federal Constitution*

Through House Joint Resolution 6 the Montana legislature contributed to the enfranchisement of the inhabitants of the District of Columbia by ratifying the proposed amendment to the Constitution of the United States providing for representation of the District in the electoral college.<sup>4</sup>

### *Montana Constitution*

The legislature proposed two amendments to the Constitution of Montana, which will be submitted to the electors of the state at the next general election for approval or rejection. One proposed amendment, Chapter 121 (S.B. 67), would eliminate the constitutional status of justice of the peace, police and municipal courts, leaving it to the legislature to establish such inferior courts and define their jurisdiction so far as it is consistent with the constitutionally prescribed jurisdiction of the supreme and district courts of the state. The other proposed amendment, Chapter 164 (H.B. 168), would extend the term of office of county attorneys to four years. The present term is two years.

## CORPORATIONS

### *Financial Statements*

Chapter 93 (H.B. 319) deals with the duty of corporate management to furnish a financial statement of the corporation's affairs, upon the request of stockholders owning at least five percent of its outstanding stock. Under R.C.M. 1947, section 15-606, upon such request the corporation's treasurer has long had the duty to prepare "a statement of the affairs of the corporation, under oath, embracing a particular account of all its assets and liabilities in minute detail," and present the same to the shareholders making the request within twenty days thereafter. The present act simply amends the above quoted provision so as to require only that the treasurer prepare "a statement under oath, of its assets and liabilities in a form ordinarily used and accepted in commercial transactions," thus making it less burdensome to supply the kind of statement required. Arguably, the "minute detail" requirement was justified infrequently, if at all.

<sup>4</sup>Kansas has become the 38th state to ratify, so that the proposed amendment has now been ratified by the necessary three-fourths of the states.

## *CRIMINAL LAW*

### *Highway Regulation*

There was no let up in the 1961 legislature in the drive for more and more laws and regulations providing for supervision and control over car and highway use. A spate of bills dealt with a variety of subjects.

Chapter 249 (H.B. 342) increases the fee for the two year driver's license from three to four dollars, and requires that a photograph of the licensee be attached to the license.

Chapter 101 (S.B. 132) gives the highway patrol board the power to issue a probationary license rather than to suspend the license in the event the driver has been convicted of certain offenses, has been involved in an accident, or has been guilty of misconduct with respect to his license. The board thus has greater flexibility in dealing with the problems which come before it.

Language has been changed in several places to make clear that forfeiture of bail, not vacated, is the equivalent of conviction for the purpose of suspension and revocation of licenses and the like.<sup>5</sup>

It has been a misdemeanor to display or possess a fraudulently altered driver's license. Chapter 70 (S.B. 58) deletes the element of fraud to avoid problems of proof. Now mere possession of an altered license is criminal.

Chapter 122 (S.B. 81) simply adds a number of sections in title 53, providing for motor vehicle registration, to those already enumerated, the violation of which is made a misdemeanor under R.C.M. 1947, section 53-102.

The principal purpose of Chapter 161 (H.B. 99) is to require the Highway Patrol Board to suspend a driver's license for sixty days on the first conviction for intoxicated driving, and for one year on a second conviction occurring within five years of the first. It also enumerates certain sections permitting exceptions to the general rule that the Board cannot suspend or revoke for a period of more than one year, permitting a longer period under these exceptions.

Chapter 137 (S.B. 48) amends R.C.M. 1947, section 31-126, naming those persons not required to have a driver's license, to include a "member of the armed forces operating, on official business, a car under the control of the United States government."

Originally, R.C.M. 1947, section 53-107, provided that "every such registration card shall at all times be carried in the vehicle to which it refers or shall be carried by the person driving or in control of such vehicle who shall display the same upon demand." In 1955 this was amended to *except* owners of *passenger* cars from this requirement. Chapter 139 (S.B. 79) adds "pick-ups and farm trucks" to "passenger cars" as exceptions. It also states that any violation of this section is a misdemeanor, carrying a \$25 maximum fine.

Chapter 109 (H.B. 97) was passed to correct technical defects in the drafting of two bills, passed in 1957 to regulate drunken driving, princi-



pally. That legislative session amended R.C.M. 1947, section 32-2142 twice—once in *Laws of Montana 1959*, chapter 194, and again in chapter 201—but for different purposes. Chapter 194 authorized the use of the blood test for intoxication as evidence in a prosecution for drunken driving, and increased the possible severity of the penalty therefor; chapter 201 expressly recognized and stated broadly the powers of municipalities to regulate extensively unlawful driving on city streets, including particularly drunken driving. However, in that act, the old form of section 32-2412 remained otherwise unchanged. These two acts were codified respectively, as R.C.M. 1947, section 32-2142(1) and 32-2142(2), as amended.<sup>6</sup> Chapter 109, in effect, consolidates these two sections by amending the latter section and repealing the former one, and renumbering the section as amended, “section 32-2141.” It also authorizes other chemical tests as approved evidence,<sup>7</sup> retains the more severe criminal penalties, and reaffirms the power of municipalities to enact all the relevant code sections into ordinances governing city traffic, with full power of enforcement thereof, *i.e.*, giving the towns concurrent jurisdiction with the state.

### *Boat Regulation*

Boat regulation was not entirely neglected in the 1961 session. Chapter 138 (S.B. 57) continues the expansion of the code regulating the use of boats by limiting the requirement that children under twelve *wear* life preservers when in a boat, being operated on water, to those in boats *under* twenty-six feet in length. It also adds the requirement that fire extinguishers must be carried on motor boats, the number to be determined by the Fish and Game Commission, or a Coast Guard approved fixed extinguisher system be installed, exempting from this requirement motor boats less than twenty-six feet in length, of open construction and not carrying passengers for hire.

### *Grain Dealers*

Chapter 224 (H.B. 176) amends R.C.M. 1947, title 3, regulating grain standards, storage, and inspection of grain, so as to require annual reports from “track buyers” and grain dealers, as well as warehousemen, and redefines “grain dealer” to include persons operating trucks and tractor-trailer units, used in the transportation and selling of grain. The act also requires that these same persons secure a license to operate, paying stated fees therefor, with certain exceptions, and post bond, with certain exceptions. The penalty for violation of the act, generally, is increased from a range of \$25 to \$100, to a range of \$300 to \$500.

### *Livestock*

Chapter 173 (H.B. 201) makes it a felony, punished by a prison sentence up to three years and/or fine up to \$2000, for any person other than the owner or his agent to remove livestock from the state without inspection where required by law. The object of the act is to curb rustling of livestock. However, the value of the exception permitting such removal

<sup>6</sup>See *Statutes of Montana 1959*, chapter 135, and chapter 201, § 201-1057 (1959).  
<sup>7</sup>See *Criminal Law Administration*, *infra*, on these provisions.

for emergency treatment by a licensed veterinarian is not very clear since, presumably, such removal would be with the owner's approval, at least.

### *Assault*

Chapter 129 (H.B. 237) simply increases the maximum sentence for second degree assault from five years to six years. The object behind the act is obscure.

### *Fireworks*

Chapter 107 (H.B. 193) absolutely prohibits the sale of fireworks—even the permissible classes—by any person under twenty-one. It also expressly extends the *general* restrictions on sales thereof to wholesalers.

### *Racing*

Although betting on racing generally is a crime, R.C.M. 1947, section 94-2425, legalizes it for certain purposes in connection with public fairs. Chapter 57 (Sub. H.B. 259) levies a graduated tax on the proceeds therefrom, to be divided seventy-five per cent to the state, and twenty-five per cent to the county in which it occurs. A full report of income must be made to the county treasurer within twenty days, and a penalty is imposed, ranging from \$100 to \$500, for each day any provision of the act is violated.

### *Sewage*

Chapter 203 (H.B. 436) regulates the use of open sewage lagoons, or cess-pools, serving five or more families, by directing the county commissioners to adopt rules and regulations governing them, when the sheriff reports that such areas are in a hazardous condition, and to give the operators personal notice of the corrective measures required. Compliance within sixty days with a right to request an extension of time if needed, is required. Non-compliance constitutes the area a public nuisance, which is enjoined, and which also carries up to a \$500 fine and/or six months in jail.

### *Prisoners*

Chapter 128 (H.B. 236) makes it a felony, with a prison sentence of "not less than ten years" to commence from the end of his current term, for any person committed to prison to hold anyone else as a hostage, or to hold another by force or threat of force.

Chapter 131 (H.B. 239) is a companion of the last act, making it a felony with a five to fifteen year sentence as penalty, for any person committed to a prison to have in his possession without lawful authority, practically any kind of dangerous weapon. Both of these acts stem from the state's experiences with the recent rioting in the state prison.

### *Wildlife*

Chapter 133 (H.B. 264) makes it unlawful to offer prizes as the sponsor of any contest involving big game hunting, based on the size or weight of game animals killed; a violation is punishable under R.C.M. 1947, section 26-324, which makes it a misdemeanor generally to violate any part of the Fish and Game Code, with a \$25 to \$500 fine, or, and/or a six months

maximum jail sentence, and also revocation of the license, at the discretion of the court.

Although the present act does not mention R.C.M. 1947, section 26-809, the latter section provides that, "This act shall not be construed to prohibit the award of prizes for any one game bird, animal, fish or furbearing animal on the basis of size, quality, or rarity," as a limitation on a general prohibition against offering any kind of prize for "bag limits."

The present act does not, in terms, amend or repeal any existing statutes.

### *Telephones*

Chapter 206 (S.B. 17) makes it a misdemeanor not to surrender a party line or a public pay telephone, upon request, to permit the placing of an emergency call, carrying as a penalty up to ten days in jail, and/or \$25 maximum fine. It is a defense, however, if the accused did not have reason to know of the emergency, or is himself using the phone for an emergency. However, to pretend to need the line for a non-existing emergency also is a crime carrying the same penalties.

## *CRIMINAL LAW ADMINISTRATION*

### *Juvenile Proceedings*

The veil of privacy around juvenile cases has been pushed partially aside. By Chapter 132 (H.B. 241) whenever a juvenile is charged with a felony any persons legitimately interested, including reporters, must be admitted to the juvenile court. Publicity may now be given to such proceedings, but in no other juvenile cases. The juvenile may not be identified upon arrest, but only when a hearing is had on a written petition charging a felony.\*

### *Charging Multiple Offenses*

Montana has left the minority of states which forbid charging more than a single offense in one information, indictment or complaint. It has gone past those which permit charging only of connected crimes and has lodged with those which permit the charging in one prosecution of "two or more different offenses connected together in their commission or . . . two or more different offenses of the same class." Thus by Chapter 172 (Sen. Sub. H.B. 165) not only the burglary, larceny, assault and robbery arising out of a single unit of action may be charged together, but also a burglary this year and a wholly disconnected one from last year. There is no doubt this may prove convenient for prosecutors, permitting them to show an habitual criminal in his true light, but it will also make it most difficult for juries to fulfill their obligation to pass on each charge as a separate issue. The question is not whether defendant has been guilty of *some* crime, but whether he is guilty of the particular offense charged against him. The defendant may be faced with an unfair burden in defending against a number of crimes at once. On the other hand, if the

\*Another statute concerned with juvenile problems is Chapter 24 (Sub. H.B. 42), authorizing joint county youth guidance centers.

prosecutor feels he has some advantage in piecemeal proceedings he still has that choice.

Aside from the question of policy there are some technical questions raised by the statute. The phrases "connected together" and "of the same class" will undoubtedly be a source of much litigation.

The statute uses the terms "indictment, information, complaint or accusation." Use of "complaint" extends this new rule into the justice court. Use of "accusation" extends it to proceedings for removal of a public official, other than by impeachment.

By repealing R.C.M. 1947, section 94-6407, the new statute has left ambiguous the way different means which may have been used in the crime are to be alleged. The repealed section permitted them to be stated alternatively in the same count, which was also permissible at common law. Presumably the repeal was not intended to abolish this rule. It should still be proper form to use the alternative statement.

Consistent with the law permitting only one crime to be charged, R.C.M. 1947, section 94-6703, made duplicity a ground for demurrer. That ground has by this new statute been expressly deleted. But this only confuses matters, since duplicity is still a defect on the face of the charge, subject, however, now to the exception created for connected or similar crimes. Though deleted, duplicity must as a matter of common sense still be a matter to be raised by demurrer.<sup>9</sup> This will be still another instance of the incompleteness of the code of criminal procedure, despite the completeness claimed for it.<sup>10</sup>

Care and some inventiveness will have to be used to fit the new rule into the pattern of trial, instruction, verdict and judgment statutes, all obviously framed with reference to a single charge procedure.<sup>11</sup>

### *Evidence*

Chapter 109 (H.B. 97) permits the state to prove indirectly the amount of alcohol in the blood of one charged with driving while intoxicated by proving the amount in his urine, breath or other bodily substance.<sup>12</sup> This avoids the problem in dispute in *State v. Cline*.<sup>13</sup>

### *Punishments*

The term of imprisonment for one who commits a felony while in the state prison, while in transit to the prison, or while escaped therefrom must, by Chapter 130 (H.B. 238), be consecutive to the term for which he was already sentenced.

<sup>9</sup>Instead of deleting subdivision three of R.C.M. 1947, § 94-6703, the legislature should have added to it, to read: "That more than one offense is charged, except as provided in section 94-..... [whatever section is assigned to the new provision]."

<sup>10</sup>*Cf.* the discussion in Recent Decision, 21 MONT. L. REV. 224 (1960).

<sup>11</sup>While the problem will be frequent now, it has occasionally arisen before when the defendant has failed to demur to a duplicitous charge.

<sup>12</sup>The statute also provides that "per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred milligrams of blood." It is most helpful to have the legislature translate for us the difficult Latin phrase "per cent" into the half-English "per one hundred."

## DOMESTIC RELATIONS

*Adoption*

Chapter 199 (H.B. 317) intends to correct certain omissions, both in substance and in form, found in the act enacting, in 1957, the Uniform Adoption Act. Bills which would have corrected some of these omissions, were introduced in 1959, but were not passed.<sup>14</sup> Those bills in 1959 would have formally repealed the relevant sections of the Revised Codes of Montana, 1947, dealing with adoption, which the 1957 act intended but failed to repeal. They also would have re-introduced the requirement that parents of children whose adoption is sought generally should be given notice of the pending proceeding, including those whose consent is not required. However, Chapter 199 provides for the issuing of a "citation" only to those parents whose "consent" is required under the law. In amending R.C.M. 1947, section 61-205, Chapter 199 does not require parental consent in six different situations. But only three of these are based on prior adjudicated facts binding the parents: judicially adjudged (a) physical cruelty to the child, (b) habitual drunkenness, (c) deprivation of custody of the child because of cruelty. It lists three additional "reasons" for dispensing with the parents' consent, not supported by any such adjudication, and requiring adjudication in the adoption proceeding: (d) alleged willful abandonment, (e) having caused the child to be maintained in some institution or adoption agency, or department of public welfare, for one year, *while able to support*, (f) failure to contribute to support for one year, *though able*.

At the very least, the last grounds for withdrawing the consent requirement should be supported by proper notice to the parents, as has been said earlier,<sup>15</sup> and there are persuasive reasons for providing for such notice in all adoption proceedings, as did Montana law itself until the adoption of the Uniform Act in 1957.<sup>16</sup>

*Duties of Support*

Chapter 208 (S.B. 60) adopts the Uniform Reciprocal Enforcement of Support Act as revised in 1958. In 1951, Montana adopted the original Reciprocal Enforcement of Support Act, as approved in 1950. Chapter 208 contains the improvements made by both the 1952 and the 1958 revisions of that act.

Both of these improved versions of the act are discussed at some length in earlier issues of the *Montana Law Review*, making unnecessary any extended analysis of the present act here.<sup>17</sup> However, a few minor changes from the Uniform Act may be noted.

Section 93-2601-17 requires the petitioner to pay the initial filing fee (\$5.00) for beginning the action, although the Uniform Act exempts such

<sup>14</sup>See *Montana Legislative Summary, 1959*, 20 MONT. L. REV. 133, 152 (1959).

<sup>15</sup>*Ibid.*

<sup>16</sup>R.C.M. 1947, § 61-130. See *Griffin v. Griffin*, 327 U.S. 220 (1946); *May v. Anderson*, 345 U.S. 528 (1953).

<sup>17</sup>Briggs, *The Reciprocal Enforcement of Support Act in Montana*, 15 MONT L. REV. 40 (1954); Briggs, *Changes in Adoption of the 1958 Amendment to the Uniform Reciprocal Enforcement of Support Act*, 20 MONT. L. REV. 40 (1958).

person from all fees. Section 93-2601-34 of the Montana act is inserted to give orders by one state district court the same conclusive effect in another state district court as foreign orders will have under the act, upon registration and confirmation, under sections 93-2601-36 and -38. Section 93-2601-21(d) adds provision for implementing 93-2601-34, in providing for registration of state support orders in the county of the defendant's residence, upon discovery that he has one in Montana. Section 23 of the Uniform Act, providing for the relaxation of the technical rules of evidence, is omitted by Montana.

The error originally made in classifying the Uniform Act as criminal in nature is corrected in our present act, by codifying it under Title 93, Civil Procedure.

### *Marriage Licenses*

Chapter 71 (S.B. 68) imposes a five day waiting period on the applicants for a marriage license, following the application, before the license will be issued. This introduces a new requirement into Montana's marriage law, though a fairly common one over the country. The act contains a saving provision, however, to the effect that, upon application to the district court, that judge may waive this waiting period upon request of the parents or on any other showing which in the circumstances seems, in his judgment, to be good cause for such dispensation.

This law expresses the concern of responsible people seeking to reduce the incidence of divorce. However, so long as the "contract marriage" is available, as a ceremonial procedure which apparently requires no license at all, efforts to deal with this problem by regulating the licensing process may be largely futile.<sup>18</sup>

## *HIGHWAYS AND TRAFFIC*

### *Land Acquisitions*

Section 32-1615, Revised Codes of Montana, 1947, was rather extensively amended by Chapter 180 (Sen. Sub. H.B. 135). The Highway Commission was granted power to acquire interests in fee, as well as easements, for purposes other than rights of way. The Highway Commission may hereafter acquire lands or interests therein for offices, weighing stations, shops or storage yards, for the culture of trees and shrubs which benefit any state highway, for highway drainage, for the maintenance of unobstructed view in the interests of safety, for the construction and maintenance of stock lanes, and for providing land for relocation of existing utilities. In addition, the amendment allows the Highway Commission to acquire land or interests for purposes of exchange, for deposits of road building materials and for parks, but provides that the power of eminent domain shall not be used for such acquisition.

The amendment changes the manner of instituting eminent domain proceedings by requiring the Highway Commission to adopt a resolution declaring that public interest and necessity require the construction or completion of the highway. Then, the bill provides that the resolution "shall

create and establish a disputable presumption of public necessity." There is also a provision whereby the Commission may acquire an entire tract when taking a portion will leave the remainder in such shape as to be of little market value. Finally, the amendment provides for the acquisition of lands and interests therein "for reasonably foreseeable future needs." Land so acquired which is not presently needed for highway purposes may be leased, all rent received to be deposited in the state highway fund.

Chapter 182 (H.B. 182) provides that, when the Highway Commission constructs a highway through an irrigation or drainage project, and acquires irrigable land for highway purposes, payment must be made for a share of the unpaid construction costs of the project proportionate to the land acquired or rendered unusable for irrigation.

### *Financial Responsibility for Automobile Accidents*

Chapter 236 (S.B. 59) eases the financial responsibility law slightly. Under existing law one whose driver's license has been suspended, revoked or cancelled for commission of certain offenses will also have his automobile registration suspended unless he establishes his ability to pay a judgment against him in the event of a future accident. This he usually does by producing an automobile liability insurance policy. The statute is amended to require proof of financial responsibility only when the license has been revoked. The objective of the financial responsibility law is to require insurance as a condition of driving for all persons who by their misconduct have indicated that they are more likely to cause accidents than is the general populace. Under the amendment there will be more uninsured drivers on the road.

### *INSURANCE*

Amendments have been made by Chapter 65 (H.B. 292) with respect to calculations of values of benefits and adjusted premiums, authorizing the use of the 1958 standard ordinary mortality table, related to cash surrender value and nonforfeiture benefits in life insurance policies. Also the law relating to the valuation of life insurance policies was amended by Chapter 61 (H.B. 146) by prescribing additional mortality tables.

### *JUDICIARY*

#### *Election of Judges*

Contests for offices of associate justices of the supreme court and district court judges are to be more sharply defined by virtue of Chapter 229 (S.B. 90). Each associate justice is to be assigned a number, and each judge of a district having more than one judge is to be assigned a numbered department. For election purposes, each associate justice is considered as occupying a separate and independent office, and each district court department is considered a separate and independent office; and candidates must designate in their petitions for nomination the number of the justice and the department for which they seek election.

#### *Court Reports*

Chapter 14 (H.B. 123) gives to the Montana Supreme Court greater control over reports of its decisions of cases. Statutory specification of

details to be contained in such reports has been eliminated, and the reports are to be made under supervision of and pursuant to rules and regulations promulgated by the justices. Also, the period of time for publication in contracts with publishers has been made more flexible, and the contract for publication may be for any period agreeable to the justices, not less than one year nor more than six years.

### *Salaries*

Chapter 187 (S.B. 205) increases the annual salaries of district judges from \$9,500 to \$10,700, and those of justices of the Supreme Court from \$11,500 to \$12,700. Unfortunately for the incumbent officials, the constitution forbids the increase by the legislature of the salaries of public officers during their term of office."

## *LABOR LAW*

### *Public Contracts*

Chapter 43 (H.B. 162) amends R.C.M. 1947, sections 41-701 and 41-703 of Montana's "Labor Code," so as expressly to include "heavy highway or municipal construction" in the kind of public construction contracts in which a clause must be inserted requiring the contractor to favor bona fide Montana residents and pay the prevailing rate of wages in the county involved, as determined by collective bargaining agreements covering heavy and highway labor, other than building construction. Such construction is defined to include also any operation incident to such construction or contract, excepting always "building construction." The act also requires that the public agency retain at least one thousand dollars liquidated damages, until final completion of the project, to insure compliance. The public contractor's license shall be revoked for one year for any violation of this law, making it impossible for him to bid on public contracts. Upon a charge being filed for such violation the district court is authorized to issue an injunction stopping such construction pending the outcome of the proceeding.

### *Unemployment Compensation*

Chapter 156 (H.B. 27) amends the present Unemployment Compensation Act in several respects. Although it increases the weekly payments, and lengthens the period for which benefits will be paid, it also intends to tighten up the qualifying conditions for receiving benefits in any event, thus measurably reducing the number of workers entitled to benefits. The range of weekly payments has been from \$10 to \$32. The new range is from \$15 to \$34; the maximum payments period is increased from twenty-four weeks to twenty-six weeks. Both R.C.M. 1947, sections 87-105, entitled "benefit eligibility conditions," and section 87-106, entitled "disqualification for benefits," are amended in an attempt to exclude at least some types of claims lacking merit.

<sup>19</sup>MONT. CONST. art. V, § 31; art. VIII, § 29. Compare the situation as to municipal officials, whose salaries are raised by city ordinance. *Broadwater v. Kendig*, 80 Mont. 516, 261 Pac. 264 (1927).



Provisions intending to maintain the "solveny" of the unemployment compensation trust fund also are further modified. Prior to 1957 the employers' contribution rates were scheduled so as to maintain a minimum-maximum fund of 18 to 22 million dollars. In that year, those rates were adjusted so as to maintain a 28 to 32 million dollar trust fund reserve. The present act amends the contribution rate schedule so as to cut the minimum-maximum back to a range of 20 to 26 million dollars in reserve funds.

The act also gives the Commission very broad powers to cooperate with the federal government in implementing any extension of any laws governing this area.

#### *Job Discrimination for Age*

House Joint Resolution 12 declares that it is against the public policy of the state of Montana and an "unfair employment practice" to discriminate arbitrarily against well qualified and otherwise capable persons between the ages of forty and sixty-five years, in employment, solely because of their age. It includes a "saving" clause recognizing the need for variation in insurance coverage, and for the practical necessity of excluding the physically, mentally, or otherwise incapable individual.

Perhaps the policy expressed in this resolution would be more meaningful if it were expressed in a labor code giving full effect to the concept of "unfair employment practices."

### **LEGISLATIVE COUNCIL**

#### *Constitutional Revision*

Further constitutional revision is envisaged by House Joint Resolution 8, requesting the Legislative Council, with the aid of a bipartisan task force of six members appointed by the Council, to develop a general plan for reorganization of the executive branch of the state government. The Council is to report its findings and recommendations to the next legislative assembly.

#### *Study of Fiscal Policy*

The Legislative Council was requested by House Joint Resolution 1 to study fiscal procedures, the earmarkings of revenue and the structure and system of accounts of the state, and report its recommendations on these subjects to the next legislative assembly.

### **LIVESTOCK**

#### *Grazing on Highway Right of Way*

Under R.C.M. 1947, sections 32-1018 to 32-1020 it has been unlawful for the owner of livestock wilfully to permit them to graze on the right of way of fenced federal or state highways unless under control of a herder. Chapter 186 (S.B. 182) amends this to forbid wilful grazing only on state highways in the Federal-Aid Primary System and on fenced state highways in cultivated areas which are part of the National System of Interstate and Defense Highways. Wilfulness previously might be proved only through habitual action or through continuation of grazing 24 hours after

notice from the police. Wilfulness is no longer thus restricted and reverts to its usual meaning. After statement of the fine for violation, the new law adds that in a civil action growing out of a collision between motor vehicle and livestock "there is no presumption or inference that such collision was due to the negligence on the part of the owner . . . of such livestock . . . or the driver." Apparently this means that violation of the statute is irrelevant in the civil suit, so that the livestock owner is under no duty by virtue of this statute to keep cattle out of the driver's way. To say that there is no presumption or inference of negligence on the part of the driver seems unnecessary, however, because none exists in the absence of statute. He must use ordinary care with respect to any person or thing in the highway whether or not it is lawfully there.<sup>20</sup> It is true, though, that one can find precedent that a driver striking livestock on the open range is presumed negligent. This statute would then negative any such presumption in the circumstances covered by its provisions.

### *Inspection and Travel Permits*

R.C.M. 1947, section 46-801, was amended by Chapter 9 (H.B. 56) to allow issuance of a travel permit by a state stock inspector for purebred cattle being transported from county to county within the state for show purposes. Another amendment, to section 46-503, by Chapter 37 (H.B. 189), provides for live inspection and marking of livestock for slaughter as a substitute for inspection of the slaughtered animal by the sheriff. The sheriff is subjected to additional duties by the provisions of Chapter 44 (Sub. H.B. 175), which provides for the issuance of a certificate by the buyer of a hide to the seller, both of whom must sign the certificate. Certificates, tags and glue are to be furnished by the sheriff to any person requiring them. The sheriff will receive the original of each signed certificate, the buyer sends a copy to the livestock commission, and buyer and seller each retain one copy. Upon reasonable notice, the sheriff may inspect the copy held by either buyer or seller. R.C.M. 1947, section 46-1102, is amended to provide that anyone who receives a hide without attaching the identification tag required "shall be deemed guilty of a misdemeanor." Finally, Chapter 113 (Sub. H.B. 282) gives state stock inspectors or other officers having authority to make inspections of slaughtered livestock or hides the power to seize and hold any hide or hides having brands so altered that the original brand cannot be determined by a reasonable inspection. If proof of ownership cannot be established within 15 days after seizure, the inspector may sell the hide and deposit the proceeds with the livestock commission, "where it shall be subject to claim by any party showing proper proof of ownership."

## **MINERALS**

### *Oil and Gas*

There was very little legislative activity, numerically or of significance, on the subject of oil and gas and hard minerals in the 1961 session. Chapter 47 (Sub. H.B. 216) is a housekeeping bill providing for funds to defray

expenses of operation under the Oil and Gas Conservation Act. Assessments of one-fourth of one cent per barrel of oil on wells producing an average of twenty-five barrels per day, of one-half of one cent per barrel on wells producing an average of more than twenty-five barrels per day and of one mill per ten thousand cubic feet of natural gas, are specified. The Act provides: "The commission shall by order, without prior notice and/or hearing, fix the amount of such assessments in the first instance and may, from time to time, without prior notice and/or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; provided, however, that in no event shall the assessments fixed by the commission exceed the said limits hereinabove prescribed. The amounts of such assessments to be fixed by the commission in the first instance and from time to time as herein provided, shall be a percentage factor (not to exceed one-hundred percent) of the rates set forth. . . ."

Chapter 175 (H.B. 218) relates to the filing of a surety bond to insure restoration of the surface and plugging of "shot holes" where geophysical exploration has been conducted. The Act provides: "Unless otherwise agreed as between the owner of the surface and such person, firm or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all 'shot holes' and restore the surface around the same as near as practicable to its original condition."

Chapter 213 (S.B. 99) amends R.C.M. 1947, section 60-132, in so far as it relates to the manner in which the Oil and Gas Commission shall give notice of proceedings before the Commission. Personal service or by certified or registered mail, or by publication in a newspaper of general circulation in the state capitol and in a newspaper in the county where the land is situated, are specified. Publication "in a trade journal or bulletin or [sic] general circulation in the oil and gas industry in the state," is permissive.

Obsolete references in the *Revised Codes of Montana* to state mortgage lands and farm mortgage loans were deleted in Chapter 184 (Sub. S.B. 12). As they relate to oil and gas these deletions occur in section 81-902 providing for a royalty of  $6\frac{1}{4}$  per cent to the purchaser of mortgage lands if the oil and gas have not been reserved to the United States and in section 81-1701 providing for the leasing of state lands for oil and gas exploration.

Procedures of the State Land Board in the leasing of state lands for oil and gas exploration and development must be specified as the result of Chapter 144 (S.B. 155), which amends section 81-1707. The amendment provides: "The board shall formulate rules and regulations, not inconsistent with law, governing the leasing of state lands for oil and gas exploration and development which shall be compiled and printed periodically. Copies of the rules and regulations and notices of changes therein shall be made available to any person desiring a copy thereof at a reasonable cost to be fixed by a rule of the board."

### *Mining*

Hard minerals, as distinguished from oil and gas, were the subject of two bills. Chapter 207 (S.B. 36) added phosphate to the materials specified in section 81-701 that could be removed from state land pursuant to a permit or lease issued by the State Land Board. Chapter 216 (S.B. 112) amended sections 93-9902 and 93-9903 by providing that the mining or extracting of ores was a public use for which the power of eminent domain could be exercised. A new category was added to the definition of public uses as follows: "To mine and extract ores, metals or minerals owned by the plaintiff located beneath or upon the surface of property where the title to said surface vests in others." To the classification of estates that could be taken for this newly defined public use were those necessary "for the mining and extracting of ores, metals, or minerals when the same are owned by the plaintiff but located beneath or upon the surface of property where the title to said surface vests in others."

### *PUBLIC UTILITIES*

Chapter 74 (S.B. 186) subjects the power of "every public utility, as defined in R.C.M. 1947, section 70-103 . . . furnishing electric or gas services in the state of Montana, to issue, assume or guarantee securities and to create liens on its property situated within the state of Montana . . .," to the supervision and regulation of the Montana Public Service Commission. Such utilities, as thus defined, are denied any power to "issue stocks and stock certificates" and other securities, except as authorized by the Commission, provided that short-term securities of one year or less, up to five per cent of the par value of other outstanding securities, are exempt from the Act. Any such securities issued in violation of the Act are declared to be void.

The burden is placed on the Commission to dispose promptly of all applications to issue such securities by a utility, ". . . and in any event within thirty" days, or of "stating fully the facts requiring continuance for a designated period of time," in the order extending the hearing period. The stated grounds for refusing such application (1. inconsistent with public interest; 2. the intended use of the proceeds are not permitted under the Act; 3. the outstanding securities that would result would exceed the fair value of the utilities properties and business) seem to give the Commission a reasonable discretion in acting on a petition, although elsewhere, the Act expressly authorizes the issuing of such securities for *any* purpose approved by the Commission.

A substantial question as to what "public utilities" are covered by this Act arises from the expressed intention to apply it to *all* utilities supplying electricity and gas to Montana consumers. It has been held, and properly so, that the Commission's power to regulate rates and adequacy of service extends to *all* corporations, domestic and foreign.<sup>21</sup> Does this Act intend to vest in the Commission the same jurisdiction and power to regulate stock and other security issues? Generally, regulatory agencies

<sup>21</sup>Gallatin Natural Gas Co. v. Public Service Comm'n, 79 Mont. 269, 256 Pac. 373 (1925).  
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of the corporate domicile regulate questions of corporate capitalization and financing, if it is regulated at all.

The dictum in the Act that securities issued in violation thereof shall be void, also raise a nice policy question of whether non-compliance with regulatory agencies, in the issuing of stock, should result in making the stock void for all purposes, or only "voidable" for some purposes.

## REAL PROPERTY

### *Eminent Domain*

Chapter 234 (Sen. Sub. for Sub. H.B. 134) provided extensive amendments for R.C.M. 1947, title 93, chapter 99. Among the many changes are these: The defendant's answer to the complaint in condemnation must contain a "specific allegation as to the total amount which such defendant claims is reasonable and just for the taking of such defendant's lands or other real property or interest therein." The court is given power to make a preliminary order that the condemnation proceed, after which it must appoint three condemnation commissioners. One is nominated by each party, and the commissioners nominated name a third who is chairman. The commissioners hold a hearing presided over by the judge who rules upon procedure and evidence, and instructs the commissioners on the law applicable. At any time after the filing of the preliminary condemnation order or after the report and assessment of the commissioners, the court has power to make an order that, upon payment into court of the amount claimed by defendant's answer or the amount assessed by the commissioners, the plaintiff takes possession.

Two other measures relating to the exercise of the power of eminent domain were virtually companion bills. Chapter 216 (S.B. 112) amended R.C.M. 1947, section 93-9902 and 93-9903 to allow exercise of the power for mining and extracting ore from beneath surface owned by others. Chapter 240 (S.B. 181) provided that, if such power were exercised, the condemnation decree should be granted only if the plaintiff agreed to purchase, or brought condemnation action against all property within three hundred feet in all directions beyond the limits of any point where the earth's surface was cut by open pit mining. Press reports at the time stated that the two bills were designed to aid the mining economy of the state, and, at the same time, to provide protection for property owners near open-pit mines.

### *Miscellany*

Under Chapter 103 (S.B. 163), to be taxed hereafter as real property, and included in the same class as land, and town and city lots, are "all trailers affixed to land owned, leased, or under contract of purchase by the trailer owner." Section 11-616, R.C.M. 1947, was amended by Chapter 152 (H.B. 413) to provide that, upon vacation of recorded plats, the title to streets and alleys should revert to the owners adjacent, but that existing easements or rights of way in public utilities should continue.

Chapter 17 (H.B. 161) validates instruments affecting real property recorded prior to the effective date of the act notwithstanding any defect, omission, or informality in the execution or acknowledgment thereof. An-

other validation act, Chapter 111 (H.B. 255), confirmed all sales and dispositions of real property made prior to its date by any county.

County commissioners were authorized by amendment to R.C.M. 1947, section 16-1131, accomplished by Chapter 48 (H.B. 219), to grant county-owned land for public parks or recreational grounds to cities and towns, as well as the state and the United States.

### SECURITIES

Repealing the present "Blue Sky" Code, R.C.M. 1947, sections 66-2001 through 66-2026, Chapter 251 (S.B. 20) enacts the Uniform Securities Act, first approved by the Commissioners on Uniform State Laws in 1956, substantially in the form then approved.

The original Act was drafted in four "Parts" in such a way as to make it easy for each state to adopt as much or as little as it wished. In the words of its editorial comment:

The first three parts represent the three basic "blue sky" philosophies: (I) the "fraud" approach, (II) registration of broker-dealers, agents, and investment advisers, (III) registration of securities. Part IV contains . . . general provisions . . . essential in varying degrees under any of the three basic philosophies.

The first three parts are designed to stand alone or in any combination.

Though not formally retaining the four part division, Montana has adopted substantially the entire Act, with only a few variations, and with some rearrangement in the order of sections. For example, the first three sections in our act, entitled (1) "Short Title," (2) "Statutory Policy," and (3) "Definitions," appear near the end of the draft Act.

Section 5 makes it unlawful to use any fraudulent scheme or make any untrue statements to aid in the sale of any security, or as an incident of engaging in the securities business generally.

The act requires two distinct types of registration: 1. registration of dealer, 2. registration of securities offered. Section 6 deals with the procedures which any person wishing to act in Montana as a "broker-dealer," salesman, or "investment adviser," must comply with, and makes it unlawful to so "deal," excepting in "exempt transactions," as defined by the act, unless he has fully registered with the "Investment Commissioner," the act's administrator. Generally, the applicant for registration must have been a Montana resident for one year, must pay the prescribed fees, and must post a bond. A registered dealer must keep complete records, as required by the Commissioner, subject to inspection, and preserve them for three years. The act states several causes, including the conviction of *any* felony, for refusing, suspending or revoking a license, subject to a right to notice and hearing by the dealer. Registration must be renewed annually, with an annual filing fee required.

Section 7 provides for the quite distinct general requirement that any "security" sold in the state, except those expressly exempted under the act, shall be "registered." On this matter particularly, the present act is

a marked improvement over existing law in that it provides three different methods for "registering" securities, depending on the amount of evidence and experience tending to establish its "respectability" and reliability as an investment. So, some securities can be registered by "notification," some by "coordination," and some by "qualification." Those securities issued by a firm with five years favorable business experience, or any security registered for non-issuer distribution, if similar securities have been registered in Montana or were originally issued under "exemption" provisions, are entitled to be registered by notification. The notification registration must contain information particularly to show that it "qualifies" to be so registered.

All securities which have been registered under the federal Securities Act of 1933 thus qualify to be registered by "coordination." The information required in this registration statement is selected principally to establish this fact, and to show the present status of the securities in other states, along with the terms and conditions of the offering to be made in Montana.

Any security may be registered "by qualification," even though it could also qualify by notification or coordination. But here, much fuller information is required concerning the character and status of the issuer, its financial condition, its management, business operations, and the principal persons managing and owning, the purposes for which the proceeds from the security offer will be used, etc. Of course, it is under this section that the registration of proposed new issues by new companies must occur. All of the above registration statements also contain information in varying detail as to the amount and price of the offering, prospectus material, and so on.

Registration by notification or coordination becomes effective "automatically" on a certain date following registration; registration by "qualification" becomes effective only when the Commissioner "so orders."

The Commissioner is given broad powers to supervise and regulate, and to require the furnishing of relevant information, and to examine the registrants' books. But one power given by the Uniform Act, omitted in the Montana act, may be worth noting. Montana omits the section authorizing the Commissioner to require that security sales be made only on a specified form of subscription or sale contract, contained in the Uniform Act for securities registered by "qualification" or "coordination." Editorial comment notes, however, that the present practice permits such authority in only a few states.

Certain classes, both of securities and specified transactions, are presently exempted from the requirement of registration, by the act. The prime large classes of securities exempted are those listed on the principal stock-exchanges in the country.

Section 17 makes any kind of fraudulent conduct incidental to the registration process unlawful. Section 21 imposes criminal penalties both for the fraudulent sale of securities under Section 5, and fraud in the registering process. But the Montana act imposes more severe penalties in some respects than does its model. It deletes the statement in the Uniform Act that no person shall be liable for the violation of any rule or order

if he proves that he had no knowledge of the rule or order," and adds a mandatory minimum sentence of one year imprisonment in the event there is a prior conviction of felony involving securities.

Section 24 continues the State Auditor as ex officio Investment Commissioner, the act's administrative officer—a position he has held in Montana since its first "blue sky" enactment.

## STATE AND LOCAL GOVERNMENTS

### *Elections*

Several statutes affecting elections were enacted. Chapter 99 (Sub. S.B. 26) provides that neither a candidate, his or her spouse, nor one who is related to a candidate within the second degree of consanguinity, may serve as an election judge; but this does not apply to school district elections nor to candidates for precinct committeeman.

The statutes with respect to residence requirements for voters in city and town elections and for officers therein have been liberalized by Chapter 76 (H.B. 180), providing that residence in an area annexed to the municipality shall be included in determining qualifications.

Chapter 36 (H.B. 115) dispenses with municipal primary elections for the nomination of candidates for the office of city commissioner, when the number of legally qualified candidates does not exceed twice the number of vacancies. The legislation, however, only applies to elections held under the commission-manager form of government.

### *Official Salaries*

The permissible maximum salaries for various municipal officials was increased by Chapter 179 (H.B. 113) and the salaries of various county officials was raised by Chapter 195 (Sub. H.B. 269).

### *Contracts*

Chapter 183 (H.B. 363) requires that all contracts awarded by the State or any subdivision or agency of the State be awarded to Montana bidders unless the Montana bidders are more than two per cent higher than a non-resident bidder. It also requires persons who are awarded such contracts to buy Montana produced materials, supplies and equipment where there are comparably priced and of comparable quality, under pain of being disqualified from bidding on public contracts for two years. Roughly, the definition of a Montana bidder is a person in actual residence for more than one year immediately prior to the bidding; or a partnership where the majority of partners have such residency; or a locally owned and controlled corporation. Whether this represents good policy is open to serious question.

### *Coal*

Chapter 150 (S.B. 201) requires that native Montana coal be used by state institutions, county buildings and public school houses which use coal for heating, but the use of coal from outside Montana is allowed if the "comparative cost" is not greater than that of native coal. "Cost" is not



defined, although grammatically it refers to the cost of coal and not the cost of its use.

### *Boundaries of Cities*

Limitations have been imposed upon the extension of boundaries of cities or towns of the first class by Chapter 217 (Sub. S.B. 166). Land used for industrial or manufacturing purposes cannot be annexed without the consent in writing of the owners of such land. Also, if a resolution of annexation is disapproved by a city council, no further resolution relating to the same territory may be considered by the council on its own initiative and without petition for a period of one year from the date of the disapproval.

### *Garbage Disposal*

The tax which county commissioners are authorized to levy for the collection and disposal of garbage and ashes, in districts outside incorporated cities and towns, has been reduced from 5 to 2 mills by Chapter 202 (H.B. 397); and in lieu of the tax the county commissioners may establish a monthly service charge not to exceed \$2.50 for a family residential unit and authorize individual contractors or firms to perform the service and collect the approved rate.

### *Protection from Open Water Ditches*

Several acts are designed to protect the public from open ditches carrying irrigation or other waters. Chapter 30 (H.B. 155) adds the building, construction and maintenance of devices intended to protect the public from such ditches as one of the purposes for which boards of county commissioners are authorized to create rural improvement districts. Another act, Chapter 32 (H.B. 156), contains a similar addition to the purposes for which city councils may create special improvement districts. A third act, Chapter 63 (H.B. 204), authorizes the governing body of a city or town to investigate the dangerous condition of unfenced, open ditches terminating within the city or town, declare the same to be a public nuisance, and determine the measures necessary to remove the nuisance. This act provides for public notice to the owners of the ditch and water rights affected, and that a person claiming the right to use the water in such a ditch may remove the nuisance in the manner ordered by the city or town. If he does not do so, the city or town may designate such ditch abandoned and order it closed or filled. The act does not apply to ditches carrying water used for commercial irrigation purposes.

### *Television Translator Systems*

Chapter 198 (Sub. H.B. 310) makes provision for the creation of special improvement districts, including areas within cities and towns and rural areas, with broad powers to own and operate television translator stations, but not community antenna systems. Petitions to form such a district must be made by registered electors owning not less than 51 per cent of television sets within the proposed district. The petition and notice of a meeting of county commissioners to hear it are published. After hearing the county commissioners must adopt a resolution either creating the district or denying the petition. If a district is created, the commissioners must appoint a board of three trustees to prepare budgets and ad-

minister the affairs of the district, and the commissioners levy a tax not to exceed \$15 per person owning a television set. Upon filing an appropriate affidavit, persons are exempt from this tax who do not receive the signal of the translator station or who receive direct reception through the means of a community antenna system from stations from which the translator station receives its service. The county treasurer keeps the taxes collected in a separate fund and disbursements are made on warrants drawn by the trustees.

### *Water*

The purchase of existing water works has been added by Chapter 134 (H.B. 320) to the purposes for which rural improvement districts may be created. The county commissioners are authorized to contract for such purchase, without advertising for bids, but the total price must not exceed the amount set forth in the notice of passage of the resolution of intention to create the district.

Chapter 46 (H.B. 211) amends R.C.M. 1947, section 16-4527, to permit the Board of Commissioners of a county water district to create reserve funds for the purpose of meeting payments of the principal of or interest on any bonded debt; and to enable them to do so, the word "minimum" is stricken from the existing law so that the commissioners are not limited to raising the minimum amount required for the payment of principal and interest.

Chapter 194 (H.B. 266) authorizes cities and towns to furnish water to industries and persons outside the city limits at reasonable rates to be approved by the Public Service Commission. It slightly amends R.C.M. 1947, section 11-1001.

### *Public Bonds and Warrants*

Two acts relating to public bonds were enacted. Chapter 19 (H.B. 233) follows the usual pattern in validating bonds and other instruments and obligations heretofore issued by public bodies of the state. The other, Chapter 210 (S.B. 77), relates to county bond issues and provides that if none of the bonds have been sold and issued within three years from the date of the bonding election, and no vested rights have accrued thereunder, the board of county commissioners may rescind the authority to sell and issue such bonds.

Chapter 31 (H.B. 111) was enacted to permit the investment by cities and towns of their moneys, for which there is no immediate demand, in their own general obligation warrants issued against funds insufficient for payment. Warrants ordered so purchased are to have attached or written upon them notice that the city or town will exercise preference rights of purchase.

## *TAXATION*

### *Inheritance Tax*

Chapter 248 (S.B. 103) provides a procedure for payment of inheritance taxes and removal of the inheritance tax lien with respect to real property transferred between spouses in contemplation of death. It seems

more than \$20,000 at the death of the transferor and only if the transferor died without having any other property necessitating the procuring of letters of administration, letters testamentary, or special letters for the purpose of terminating a joint tenancy. The act requires the county clerk and recorder, apparently at the request of the grantee, to give the county assessor a description of the property and the names of the grantor and grantee. The county assessor is then to have the property appraised and certify the appraised value to the State Board of Equalization so that it can determine what, if any, inheritance tax is due. The grantee may pay the tax to the county treasurer and have a certificate showing that the tax was paid, or that no tax was due, filed with the county clerk and recorder.

### *Corporation License Tax*

In 1959, the legislature dealt rather extensively with the subject of Montana's corporate license "fee," based on its annual net income, increasing the "fee" or tax levied, from three per cent to five per cent, with certain enumerated exemptions. R.C.M. 1947, section 84-1505, provides for the assessment and collection of that "fee" by the State Board of Equalization. Chapter 102 (S.B. 140) attempts to provide a more effective and expeditious method for collecting the tax thus imposed, when due and unpaid, by amending that section to provide for an extremely summary procedure for levying upon and selling the corporation's property in satisfaction of the tax lien created under the law existing heretofore.

If any tax imposed under this act is not paid within sixty days after it becomes due, the Board is directed to "issue a warrant under its official seal, directed to any sheriff of any county . . . commanding him to levy upon and sell the real and personal property of the [debtor] corporation owning the same." The sheriff is further directed to file a copy thereof with the clerk of the district court within five days following its receipt. The court clerk has the further duty of entering the name of the corporate taxpayer in the judgment docket as a judgment debtor, whereupon the resulting judgment lien is immediately executable against the debtor's property in the same manner as is any judgment lien. The sheriff also has the duty of fully executing the Board's warrant and returning the proceeds of the execution and sale within sixty days "from the date of the warrant."

Though extremely summary in character, this procedure is practically identical with that which has been provided for in Montana's Unemployment Compensation Code for over 20 years.

Alternately, the Board may issue the same warrant to any income tax collecting agent, whereupon he is authorized and directed to take the same steps as the sheriff in completing the execution and sale of the corporation's property.

This act further expressly provides for action at any time by the Attorney General for the collection of such taxes, upon request of the State Board of Equalization.

*Additional Organizations Taxed*

Chapter 155 (H.B. 131) deletes from the list of organizations exempted from the corporation license tax the following: mutual savings banks not having a capital stock represented by shares; domestic building and loan associations or cooperative banks without capital stock, organized and operated for mutual purposes and without profit and labor, agricultural or horticultural cooperatives organized and operated on a cooperative basis.

*Income Tax*

Chapter 154 (S.B. 193) removes payments to nonresidents for "leases, rentals or royalties derived from property located within the state of Montana" from the list of items subject to withholding, under R.C.M. 1947, section 84-4903.2, at rates to be set by the State Board of Equalization not to exceed three per cent, provides that the Board may adopt rules and regulations requiring the filing of reports and information to insure the collection of Montana state income tax on such payments. The statute also permits the Board to order withholding on such payments in an amount equal to the tax liability of the recipient.

*TORTS**Defamation*

Under Montana law one who is defamed can recover without proof of actual damages in the event the defamation is what is called slander per se or libel per se. Slander per se is, in the usual case, a false oral statement charging another with some crime or with lack of the qualifications necessary for his office, profession or business. Libel per se is a false writing which, on its face, makes a statement holding another up to contempt or ridicule or tending to injure him in his occupation.<sup>23</sup>

Chapter 159 (Sub. H.B. 53) limits, in some circumstances, recovery for even slander per se and libel per se to provable actual damages. It provides that if a defamatory publication is made "in any newspaper, magazine, periodical, radio or television station" under "honest mistake or misapprehension" a timely correction will limit recovery to actual damages. The defamed person must give notice, specifying the objectionable statement, and setting out the truth of the matter. The publisher thereafter has a reasonable time, not less than a week,<sup>24</sup> to retract his statement or, in the event reasonably diligent inquiry does not reveal with certainty what the truth is, to publish the defamed person's statement of the true facts.

This statute offers several difficulties. We are dealing with an area in which the law has long assumed that certain serious charges will cause harm even if proof of pecuniary loss cannot be produced.<sup>25</sup> It seems doubt-

<sup>23</sup>For further discussion see Kimball, *Defamation: The Montana Law*, 20 MONT. L. REV. 1 (1958).

<sup>24</sup>The statute says that a retraction broadcast is within a reasonable time if it is made within a week and at the same time of day as, and equal in duration to, the defamatory broadcast. The latter are obviously not relevant to the definition of a reasonable time. They are rightly stated again later as criteria for the adequacy of the correction.

<sup>25</sup>According to The Missoulian, Feb. 5, 1961, p. 6, col. 1, the assumption in the House seems to have been that the bill simply permitted a defense against punitive dam-

ful that the harm is washed out by a retraction a week later which need have no greater prominence than the defamation. The objection is strongest with relation to radio or television broadcasts, but applies in lesser degree to periodicals as well.

The meaning of the phrase "honest mistake or misapprehension" may cause difficulty. It seems unlikely that "misapprehension" is intended to mean anything different from "mistake." "Mistake" is defined in the dictionary as "an error in action, judgment, perception, or impression." It thus can include a typographical error, a reporter's error in ascertaining and recording the facts, and even a commentator's misjudging the import of the facts. Presumably even a grossly negligent mistake is still an honest one. An editorial stating that county officials are thieves might be honestly, though negligently, mistaken and yet unless a specific loss can be shown it will be free from liability so long as the officials are permitted to deny thievery in the same newspaper.

The statute is obviously intended to protect the newspaper or broadcaster, but it is also available to a private person who makes a statement in one of the mass communication media.<sup>25</sup> If a politician over television calls an opponent a thief "under honest mistake" he may escape payment of damages in nearly every case by broadcasting a retraction. If he makes the same statement at a political rally he cannot create any defense by retracting it. If he writes a letter to the editor which is published he can obtain a defense to the publication in the newspaper but not to the "publication" of his letter to the editor who first reads it.<sup>26</sup> The distinctions seem foolish.

Presumably an action will still lie for libel or slander per se even though no general damages are allowed. The retraction affects not liability, but the measure of damages. Presumably plaintiff would thus have at least costs.

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ages. This is unfortunate. While general damages may be punitive in fact if the jury chooses to make them so, their purpose is to compensate for real injury which is not susceptible to proof of pecuniary loss. If a plaintiff loses his friends, if he suffers anguish and serious physical illness, if he is put to great expense to refute the charges he has still not suffered the kind of damage which traditionally has been thought of as "special" or "actual" damage. See PROSSER, *TORTS* 593-94 (2d ed. 1955). It could be argued, as seems to be in accord with statements reported made in the House, that "actual damages" are to be contrasted with "punitive damages." But this would make the whole statute absurd inasmuch as no publisher is now liable for punitive damages in the event of an honest mistake. Malice must be shown for punitive damages to be allowed. The newspaper report of discussion in the Senate indicates a clearer understanding there of the effect of the statute.

<sup>25</sup>While the tenor of the statute is to protect news media, it applies to "any civil action . . . on account of . . . publication in any newspaper," etc. It refers to "those alleged to be responsible or liable for the publication," without distinguishing between the individual author or speaker and the newspaper or radio station which carries his statement.

<sup>26</sup>The statute applies to a defamatory publication "in any newspaper, magazine, periodical, radio or television station." Presumably the use of "station" rather than "broadcast" was intentional. This would permit the defense in the case of a television broadcast even though some were present to hear the statement in person. Suppose, however, the statement is not made in the station, but at a rally which is being televised.

The statute seems justifiable to protect a newspaper when, for example, it prints a letters-to-the-editor column; the statute seems much less desirable with reference to news reporting and editorial statements, even under honest mistake.

## WATER LAW

### *Water Supply for Housing Subdivisions*

Chapter 95 (Sub. S.B. 41) is one of the more important and far reaching products of the recent legislature, in that it affects all future subdivision developments. "Subdivision" means practically any parcel divided into five or more parcels of which any one is less than five acres in size, where the parcels are to be used for residences and are described by map or survey or otherwise as separate parcels. It goes into effect immediately.

The act is designed to extend our present laws controlling water supply and sewage disposal to include individual wells and individual sewage systems, cesspools, septic tanks, privies, water closets, etc.

The act prohibits the recording of any map or plat of a subdivision unless it has the approval of the State Board of Health, or unless it is recorded with a "sanitary restriction" prohibiting the development of the subdivision. Board of Health approval can be obtained by submitting a plan of sanitation to the Board, which will either approve or specify conditions for approval. There is provision for recording the approval or the removal (or modification) of previously recorded sanitary restrictions.

The Board of Health is authorized to make rules and regulations adopting sanitary standards and specifying the type and construction of private water and sewage facilities for the proper disposal of sewage and procurement of safe water.

The act recognizes our national need to guard and protect our precious water supplies.

### *Groundwater*

Chapter 237 (H. Sub. for S.B. 78) is referred to as the "Groundwater Code." It is the result of much work and much compromise, and in places it shows the effects of having been introduced in each legislature since 1951 (except 1957), having been the topic of two water resources conferences, having been drafted for this legislature by seven persons with widely different interests and approaches, and having been shaken up considerably by the game of politics in the 1961 legislature. It probably will need some amending to smooth out wrinkles which it picked up during its pre-enactment life.

Section 2 of the law is most significant. It guarantees a priority to all vested surface water rights obtained prior to January 1, 1962, over all prior or subsequent groundwater rights. Surface and groundwater rights acquired after January 1, 1962, will be integrated, taking priority with respect to each other in order of time of acquisition. Hence the over-all order of priority will be: (1) pre-1962 surface rights, (2) pre-1962 groundwater rights, and (3) post-1962 surface and groundwater rights in order of time of acquisition. This is a departure from the prior appropriation doctrine of "first

in time—first in right.” This is truly an ambitious, or even a sensational attempt to conform the law to the physical fact of integration of water, long sought by hydrologists, engineers and geologists.

Section 3 of the law provides details for filing for groundwater rights, and excludes any other means of obtaining a right. “Use rights” are outlawed, as they have been with respect to adjudicated streams since 1921.<sup>27</sup> Moreover, section 3 requires the filing of a “Notice of Completion” so that the filed record will be accurate and complete. Our present *surface* water filing law requires only the filing of a “Notice of Appropriation,” stating what the appropriator hopes to do.<sup>28</sup> Error is inherent in our *surface* filing law because there is no way of telling from the record whether a right was obtained under the filed “Notice of Appropriation” and, if so, how much water is covered by the right.<sup>29</sup> This new law, by requiring the filing of a “Notice of Completion,” will result in a meaningful, accurate and complete record. It may serve as a model for amendments to our surface water filing law.

Section 4 is where the new law begins to show its teeth. This section provides for a hearing,<sup>30</sup> upon notice, which can result (under section 5) in an order to decrease the withdrawal of groundwater in any area where the withdrawals exceed the safe annual yield of groundwater as measured by the recharge of the area. In ordering such a decrease, the Administrator must conform to the order of priority of rights in the area, which means that the persons who most recently attained groundwater rights will be the first ordered to stop pumping.<sup>31</sup>

Sections 6 and 7 provide for “adjudication” of priorities among groundwater users in an area by means of an administrative hearing and finding of priorities. In one of the earlier drafts it was the intent to bring surface water rights, into such a hearing, and determine all water rights, surface and ground, in the area. The “adjudication” of surface water rights was excised, but section 6 still vestigially provides for joining the owners of surface water rights. Since section 2 provides for integrating the priority of surface and groundwater rights, permissive joinder should be provided, and perhaps that will be the effect of the disjunctive “or”

<sup>27</sup>R.C.M. 1947, § 89-829; *Anaconda Nat'l Bank v. Johnson*, 75 Mont. 401, 244 Pac. 141 (1926); *Donich v. Johnson*, 77 Mont. 229, 250 Pac. 963 (1926).

<sup>28</sup>R.C.M. 1947, §§ 89-810 to -812.

<sup>29</sup>*Ibid.*

<sup>30</sup>Senate Bill No. 78 provided for the State Engineer to ask for a hearing before the State Water Conservation Board, referred to in that bill as “the Board.” This bill, House Substitute for Senate Bill No. 78, makes no provision for such a policy board, but in the legislative tinkering this section 4 still contains a vestigial provision that the designation of a controlled groundwater area shall be “proposed to the board by the Administrator.”

This error may mean that the teeth put into the law are false teeth which will crumble when tested. In this particular the law needs amending at the earliest opportunity. It doesn't appear that this error need have any effect upon the other aims of the law.

<sup>31</sup>The hearing provided may not seem satisfactory to some of the parties, inasmuch as the Administrator makes determinations and if people think that his wisdom or judgment are at fault, they get to have a hearing before the Administrator. The original Senate Bill No. 78 provided that if people disagreed with the Administrator they could obtain a hearing before the State Water Conservation Board. But the new law, in effect, lets the Administrator be the judge of his own thoroughness and wisdom.

in the requirement of section 6 that "all appropriators of groundwater or of surface water . . . shall be included as parties." These sections do not specifically authorize any determination concerning surface water rights, and by implication they are excluded. Time will tell whether such an integrated hearing can occur under these sections, or whether the adjudication of relative priorities including both types of users will have to come through a bill of peace<sup>32</sup> without the aid of any statutory authorization for an administrative determination.

Once an area has been determined to be in need of control (*i.e.*, where controls are imposed under sections 4 and 5), no further appropriations can be made in the area without the permission of the administrator. Sections 8 and 9 provide for applying for such a permit, and for a hearing by persons dissatisfied with the administrator's ruling upon such an application.<sup>33</sup> Thus Montana has enacted a "permit system" of appropriation for those areas in which the groundwater situation is critical.

Sections 10, 11, 12 and 13 provide for appealing to a district court any of the orders of the administrator, and for appealing district court orders to the supreme court. Section 11 provides that the hearing before the district court shall be a trial *de novo*, apparently following the procedure in workmen's compensation cases<sup>34</sup> specified in R.C.M. 1947, section 92-834. The constitutionality of such a procedure has been questioned in *Peterson v. Livestock Commission*,<sup>35</sup> and such a provision removes much of the utility in having an administrative hearing in the first place. Senate Bill 78 did not require a trial *de novo*, but this House Substitute for Senate Bill 78 does, and this one is the law.

Other provisions of the new law exclude water that isn't fresh water; permit the petroleum industry to deal mainly with their own regulatory agencies; provide for rules and regulations, investigations, and fees; and forbid waste of groundwater.

Effective date of the law is January 1, 1962. Thereafter, its immediate effect on most people will be the requirement that to obtain a right the filing requirements must be followed. Later it will be used to limit groundwater withdrawals in areas, to establish a "permit system" in areas where withdrawals are limited, and as a basis for administrative determinations of priorities of right.

### *Columbia Interstate Compact*

Chapter 85 (S.B. 83) is for the purpose of ratifying the "Columbia Interstate Compact" but cannot become effective because it required ratification also by Idaho, Oregon and Washington. Washington, at least, refused ratification this year. The compact is also intended to gain the ratification of Nevada, Utah and Wyoming, each of which has a small area within the Columbia River drainage.

<sup>32</sup>See discussions of this in Stone, *Are There Any Adjudicated Streams in Montana?*, 19 MONT. L. REV. 19, 22 n.10 (1957).

<sup>33</sup>The same objection to this hearing exists as exists with respect to the hearing provided in sections 4 and 5. See note 31, *supra*.

<sup>34</sup>R.C.M. 1947, § 92-834.

<sup>35</sup>120 Mont. 140, 149, 151 P.2d 152, 157 (1947).



Several of the provisions of this compact appear to be modeled after the highly successful "Upper Colorado River Basin Compact" which gives a preference to consumptive uses of water over non-consumptive uses. It should be noted that the Colorado River has somewhere between one-seventh to one-ninth the flow that the Columbia has, and the Colorado flows through a slightly larger area within the United States, but an area which is the arid Southwest. The rivers, their drainages, and their best uses are not comparable, and in designing a compact, these physical facts should be kept in mind.

This compact would bind these Northwest states, without possibility of withdrawal except upon the unanimous consent of the four major Columbia basin states and the Congress of the United States. Presumably our legislature was persuaded of some desperate need for such a binding document. There has not been much public discussion in Montana of that need, in connection with this proposed compact.

### *Water Well Contractors*

Chapters 176 (H.B. 242) is the "Montana Water Well Contractor's License Act," which carries out its title. It requires persons who drill water wells for pay, on land other than their own, to pay a \$100 license fee. If the commercial driller has been in the business for three years or more, including a year's residence in Montana, then he qualifies under a "grandfather clause"; otherwise he must pass an examination and meet the qualifications required by the act. By and large the qualifications are stated in broad terminology (*e.g.*, "familiar knowledge of Montana ground water laws . . . knowledge of underground geology in its relation to well construction").

The act purports to be for the purpose of accomplishing lofty aims connected with preventing waste and promoting conservation of groundwater. It provides for a three man board to examine applicants for a driller's license, and empowers the board to promulgate rules and regulations toward accomplishing these purposes. But these items are not specific or detailed and it is assumed that those presently in the business are all "good guys" anyhow, at least if they are active enough to afford payment of the fee. There is provision for inspecting wells, but this occupies just one sentence. There is nothing in the act which indicates that it is truly aimed at accomplishing the lofty purposes claimed for it. It doesn't even require a driller to file a well log.

### *Canadian Treaty — Libby Dam*

Senate Joint Memorial 1 urges the ratification of the Canadian Treaty (which has since occurred) and the construction of the Libby Dam. It further asks for the reservation of a block of power for Montana and the provision of funds for expanded services in Lincoln County in the nature of police, school, hospital, transportation facilities and of access to mines and forests in the reservoir area.

Of particular concern to Montanans is the Canadian Treaty, still to be ratified by Canada, which will provide for large amounts of storage in

Canada for flood control and hydroelectric power in the United States. This will have an effect upon the desirability and feasibility of storage projects located within the United States.

## WORKMEN'S COMPENSATION

### *Administration*

For employers coming under Plan 2, Chapter 49 (H.B. 235) permits a filing of certification of insurance rather than the policies themselves.

The salary of the chairman of the Board is increased from \$7000 to \$9500 by Chapter 148 (S.B. 178).

### *Benefits*

A new schedule of benefits under workmen's compensation has raised maximum compensation substantially for large families. The increase under Chapter 162 (H.B. 140) is only from \$28 to \$29 weekly for a single claimant, but from \$42.50 to \$50 weekly where there are six persons entitled to share in the compensation. The bill to increase benefits in 1959 was vetoed by the governor, so this is the first increase since 1957.

Payments now are to be made biweekly rather than monthly (Chapter 197 (H.B. 291)), which will add to the cost of administration, but may be desirable for the recipients. In the event compensation by employer or insurer is unreasonably refused prior to award, or unreasonably delayed after an award has been made or order or decision rendered, the Board now has the right to impose a penalty by increasing the "full amount of the . . . award . . . by ten per cent of the weekly award." Whether this provision of Chapter 227 (S.B. 66) intends to make the penalty ten per cent each week or only of one week's award (which would be an insignificant amount) is not clear on its face, but presumably the former was meant.<sup>85</sup>

### *Injury*

In response to the case of *Hines v. Industrial Accident Board*,<sup>87</sup> where the supreme court held contraction of polio an industrial accident, the legislature enacted as part of Chapter 162 (H.B. 140) a new and very restrictive definition of injury:

"Injury" or "injured" means a tangible happening of a traumatic nature from an unexpected cause, resulting in either external or internal harm, and such physical condition as a result therefrom and excluding disease not traceable to injury.

"Traumatic" usually refers to a "wounding," or "external violence." Unless it is given a broader meaning, it could exclude recovery for such injuries, held compensable in the past, as collapse from a sudden temperature drop of 88 degrees and strenuous exertion in a mine airshaft,<sup>88</sup> back-

<sup>85</sup>Apparently no penalty is available for unreasonable delay in paying a lump sum such as the disfigurement award (up to \$2500) or the payment to parents of \$3000 in the event deceased left no dependents.

<sup>87</sup>358 P.2d 447 (Mont. 1960).

<sup>88</sup>*Nicholson v. Roundup Coal Mining Co.*, 79 Mont. 358, 257 Pac. 270 (1927); cf. *Birdwell v. Three Forks Portland Cement Co.*, 98 Mont. 483, 40 P.2d 43 (1935) (heat prostration); *Ryan v. Industrial Accident Board*, 100 Mont. 143, 45 P.2d 775 (1935) (heat).

strain from lifting a pole,<sup>39</sup> or heart attack from pushing a mail cart.<sup>40</sup> The requirement of "unexpected cause" could be troublesome. It ought not matter that the workman expected trauma as a part of his work, such as the regular jolt given by some machinery to its operator, if on some occasion it should freakishly cause him serious harm.

### *Vocational Rehabilitation*

Chapter 21 (H.B. 244) provides for an allocation of \$100,000 for the next biennium to carry on a program of vocational rehabilitation of permanently disabled workmen covered by Plan 3. If the rehabilitation is successful the workman can be self-supporting again, wholly or partially, and the industrial accident fund will be relieved of a burden. During his training the workman continues to draw his compensation and is also reimbursed for his training expenses.<sup>41</sup>

Employers and insurers under Plans 1 and 2 can voluntarily join in the program upon payment of their full share of the expense involved.

### *Silicosis*

Despite the enactment of the occupational disease act two years ago only a handful of silicotics have qualified. Over ninety-nine per cent are still under the silicosis program of the state welfare department. By Chapter 225 (Sub. H.B. 312), however, administration of this whole welfare program will be transferred to the Industrial Accident Board. The present rate of welfare payments to silicotics is \$75 each month.<sup>42</sup>

<sup>39</sup>O'Neil v. Industrial Accident Board, 107 Mont. 176, 81 P.2d 688 (1938) (neurosis).

<sup>40</sup>Murphy v. Anaconda Co., 133 Mont. 198, 321 P.2d 1094 (1958); Rathbun v. Taber Tank Lines, Inc., 129 Mont. 121, 283 P.2d 966 (1955).

<sup>41</sup>This statute illustrates the persistent problem of burdening the statute books with unnecessary definitions. The statute specifies that use of the masculine includes the feminine. The same definition also appears, for example, in the workmen's compensation act and in the occupational disease act. R.C.M. 1947, §§ 92-420, -1303(25). The definition need never be used in a statute in view of R.C.M. 1947, § 19-103, making that definition applicable to the entire code.

<sup>42</sup>Silicotics totally disabled to do manual labor receive this amount if they do not have an income of more than \$150 each month from intermittent non-manual employment or other sources. Chapter 3 (H.B. 14) made some amendments to the silicosis workmen's compensation act, but the amendments are all duplicated in Chapter 225 (Sub. H.B. 312), discussed above.